No. 06-786

In The
Supreme Court of the United States

AARON LOCKLEAR,

Petitioner,

v.

BERGMAN & BEVING AB; LUNA AB,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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COUNTER-STATEMENT OF THE QUESTION PRESENTED

Did the Fourth Circuit correctly determine that the amended complaint, filed after limitations had run, did not relate back under Federal Rule of Civil Procedure 15(c)(3) to the original complaint where: the plaintiff, lacking knowledge of Bergman & Luna, sued another, unrelated defendant in the original complaint shortly before limitations were to expire; the plaintiff first discovered Bergman & Luna only after the limitations period had run; the amended complaint substituted Bergman and Luna as entirely new parties to replace the original defendant; and Bergman and Luna had no prior notice whatever of the claim?

CORPORATE DISCLOSURE STATEMENT

Respondent Bergman & Beving AB is a publicly held corporation of which there is no parent corporation and of which no other publicly held corporation holds ten percent or more of the stock. Respondent Luna AB is the subsidiary company of its parent, Bergman & Beving AB.

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RULES AND STATUTORY PROVISIONS

Fed. R. Civ. P. 4(m)

(m) Time Limit for Service. If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This subdivision does not apply to service in a foreign country pursuant to subdivision (f) or (j)(1).

Fed. R. Civ. P. 15(c)

(c) Relation Back of Amendments. An amendment of a pleading relates back to the date of the original pleading when

(1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or

(2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and, within the period provided by Rule 4(m) for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a

defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against that party.

The delivery or mailing of process to the United States Attorney, or the United States Attorney's designee, or the Attorney General of the United States, or an agency or officer who would have been a proper defendant if named, satisfies the requirements of subparagraphs (A) and (B) of this paragraph (3) with respect to the United States or any agency or officer thereof to be brought into the action as a defendant.

Md. Lab. & Empl. Code Ann. § 9-902(a)(c)-(d) (1991, 1999 Repl. Vol.)

§ 9-902. Action against third party after award or payment of compensation.

(a) *Action by self-insured employer, insurer, or fund.* – If a claim is filed and compensation is awarded or paid under this title, a self-insured employer, an insurer, the Subsequent Injury Fund, or the Uninsured Employers' Fund may bring an action for damages against the third party who is liable for the injury or death of the covered employee.

. . .

(c) *Action by covered employee or dependents.* – If the self-insured employer, insurer, Subsequent Injury Fund, or Uninsured Employers' Fund does not bring an action against the third party within 2 months after the Commission makes an award, the covered employee or, in case of death, the dependents of the covered employee may bring an action for damages against the third party.

(d) *Limitations period.* – The period of limitations for the right of action of a covered employee or the dependents of the covered employee against the third party does not begin to run until 2 months after the first award of compensation made to the covered employee or the dependents under this title.

INTRODUCTION

Petitioner Aaron Locklear ("Locklear") was injured on the job in a factory machine accident in December 1999. He contemplated a product liability and negligence suit. By his own admission (*see* Petition at 4), it appears that he did not begin his inquiry to determine the manufacturer of the machine until three weeks before Maryland's general three-year statute of limitations was to expire. Locklear first filed a complaint suing another, unrelated Swedish company, Hassleholms Mekanisk AB, as the defendant in December 2002. Three years and nine months after the accident, in October 2003, he filed an amended complaint suing Respondents, Bergman & Beving AB and Luna AB ("Bergman and Luna") as the defendants. Bergman and Luna first learned about the accident and the lawsuit in February 2004, i.e., four years and two months after the cause of action accrued. Both the district court and the circuit court concluded that the amended complaint did not relate back under Federal Rule of Civil Procedure 15(c)(3) and was therefore time-barred by limitations. The lower courts held that Locklear's lack of knowledge of Bergman and Luna under these circumstances did not constitute a naming mistake that could be corrected by a

relating-back amendment. The decisions of the lower courts concurred with the great weight of authority on the working of Rule 15(c)(3).

STATEMENT OF THE CASE

Locklear alleged that on or about December 20, 1999, he was hurt while operating a metal rolling machine while at work within the Maryland Plastics, Inc., plant in Aberdeen, Maryland. The original complaint was not filed until December 17, 2002, a few days before Maryland's general three-year limitations period was to expire. The temporary tolling provision under Maryland's workers' compensation law extended the limitations period for Locklear's action against a third party, e.g., the machine's manufacturer, an additional two months until February 2003. Locklear thus enjoyed a full 38 months, from December 1999 to February 2003, to determine his proper defendant.

Locklear acknowledges the statute of limitations ran on or about February 20, 2003. Petition at 5. However, Locklear misstates the operation of the temporary tolling provision in the workers' compensation law by suggesting at page 4 of the Petition that he was obliged to wait for "authorization" from his employer or from the workers' compensation insurer before pursuing a claim against a third-party defendant. He further suggests that he was only "authorized" to pursue his claim three weeks prior to the expiration of limitations. Those assertions are incorrect. The statute requires only that an injured worker wait two months from his first award of compensation before

suing a third-party defendant. Md. Lab. & Empl. Code Ann. § 9-902(c)-(d) (1991, 1999 Repl. Vol.); *see also* the district court's analysis in Petition App. at 17a, n.2. If the employer or insurer has not brought an action against the third party by then, the injured worker is free to do so. *Id.* Locklear received his first compensation check December 23, 1999. Two months later, in February 2000, no action having been filed by the employer or insurer, he was permitted to file suit at any time thereafter until February 20, 2003.

The original complaint sued as the defendant Hassleholms Mekanisk AB, a registered corporation of Hassleholm, Sweden, or that corporation's successor, assign, purchaser, or surviving legal entity.[1] Locklear also sued a Hassleholms wire roller machine type 1P110/5, serial #: 954 (*sic*); an "Unknown Seller" of the same Hassleholms wire roller machine; an "Unknown Distributor" of the same Hassleholms wire roller machine; and an "Unknown Importer" of the same Hassleholms wire roller machine. Locklear failed to serve any of these original defendants within the general 120-day period contemplated by Rule 4(m), i.e. before April 16, 2003.

By order dated April 30, 2003, the district court directed Locklear to effect service upon defendant Hassleholms Mekanisk AB, on or before September 17, 2003. Petition App. at 41a. The order recounted, "On December 16, 2002, plaintiff's counsel submitted a letter to this court in which he requested that the complaint be filed

[1] The letters AB in the name stand for "Aktiebolag," literally translated from the Swedish as a "share company" or more accurately construed to mean a corporation. In the original complaint Locklear thus sued the Hasselholm Mechanical Corporation.

and that service of the summons be held 'at a later date.' Plaintiff's counsel has had no further communication with the court." Shortly before the new deadline, on September 4, 2003, Locklear by motion (Petition App. at 42a) requested a further extension of nine months to serve the defendants, which request was granted by marginal notation on September 8, 2003. Locklear's motion to extend the deadline for service informed the court in paragraph 3 that, within the last two weeks, he had discovered the name and location of the manufacturer of the allegedly defective equipment.[2] By letter dated September 8, 2003, the court directed Locklear to file an amended complaint by October 10, 2003. Petition App. at 46a.

Locklear filed his amended complaint on October 9, 2003. The amended complaint deleted Hassleholms Mekanisk AB as the defendant and substituted instead Bergman & Beving AB, of Stockholm, Sweden, and Luna AB of Alingsås, Sweden. The amended complaint further named as defendants an unknown seller, an unknown distributor, and an unknown importer of a Luna machine type IP110/5. The amended complaint alleged that the factory machine was designed and built by Luna AB and Bergman & Beving AB. The amended complaint sounded in negligence, strict product liability, and breach of warranty.

On February 20, 2004, i.e., four years and two months after the accident, Locklear's counsel sent an e-mail message to both Luna and Bergman advising them of the

[2] Locklear did not disclose the names of the new defendants in these communications with the district court.

suit; a copy of the amended complaint was attached to that e-mail message. The February 20, 2004, e-mail message was the first notice to Bergman and Luna of the accident or of the lawsuit. Summonses for Bergman and Luna issued March 26, 2004. Service of process was effected later in the spring of 2004.

Bergman and Luna moved preliminarily to dismiss on the grounds of lack of personal jurisdiction and the time bar of limitations. Not reaching the jurisdiction issue (*see infra* page 16), the U.S. District Court for Maryland granted the motion to dismiss by reason of limitations. *Locklear v. Bergman & Beving AB*, 224 F.R.D. 377 (D. Md. 2004); Petition App. at 15a.

The district court dismissed the action, rejecting in detail Locklear's view that the amended complaint related back. The district court first discarded Locklear's contention that by identifying the factory machine's serial number in the original complaint, he had placed Bergman and Luna on notice of the claim at the time of the first filing. Petition App. at 19a, n.3 ("It cannot be said that this argument falls from its own weight, but only for the reason that the argument has no weight whatsoever. Obviously, the mere inclusion of a serial number in a complaint filed in Baltimore, Maryland, is not sufficient to place Swedish corporations on notice that they are parties to a suit here.") The trial court next determined that service extensions granted under Rule 4(m) apply only to a name-correcting amendment, rather than the addition of entirely new defendants as here, for the purposes of Rule 15(c) analysis. *Id.* at 21a ("Plaintiff did not 'misname' the Defendants in his initial complaint. Rather, in the amended complaint, Plaintiff named entirely different companies than those he originally sued.") Finally, the

district court explained that Locklear's lack of knowledge of the identity of Bergman and Luna was not a "mistake" within the meaning of Rule 15(c)(3) when he failed to identify them at all as defendants in the original complaint, and the Swedish companies could not have anticipated the action prior to the e-mails received in February 2004, more than four years after the injury. *Id.* at 22a-23a. The district court concluded, "Neither Bergman nor Luna could have anticipated this suit prior to the emails received ... more than four years after Plaintiff's injury. Absent any notification of suit, constructive or otherwise, the Defendants are entitled to the repose and finality that underlies the decision to adopt a statute of limitations." *Id.* at 23a.

Not reaching a second question pertaining to Rule 4 (*see infra* page 15), the U.S. Court of Appeals for the Fourth Circuit affirmed. *Locklear v. Bergman & Beving AB*, 457 F.3d 363 (4th Cir. 2006); Petition App. at 3a. In affirming, the Fourth Circuit held that Rule 15(c)(3)(B) is not satisfied when the claimed mistake consists of a lack of knowledge of the proper party to be sued, and that Locklear's replacing Hasselsholms Mekanisk AB with Bergman and Luna did not qualify as a mistake for the purposes of the relation-back rule. Petition App. at 13a.

The Fourth Circuit panel denied without comment Locklear's petition for rehearing.

REASONS FOR DENYING THE PETITION

1. The Fourth Circuit's decision was correct.

This Court should deny the Petition because the Fourth Circuit correctly interpreted and applied Rule 15(c)(B)(3) to Locklear's untimely amended complaint. The unanimous panel of the appellate court first observed generally that "'Rule 15 has its limits, and courts properly exercise caution when reviewing an application of the rule that would increase a defendant's exposure to liability,'" *id.* at 9a (quoting *Intown Properties Management, Inc. v. Wheaton Van Lines, Inc.*, 271 F.3d 164, 170 (4th Cir. 2001)); that Rule 15 "must be applied especially cautiously when an amendment that 'drags a new defendant into a case' is proposed," *id.* (quoting *Intown Properties* at 170); and that "'a potential defendant who has not been named in a lawsuit by the time the statute of limitations has run is entitled to repose – unless it is or should be apparent to a person that he is the beneficiary of a mere slip of the pen,'" *id.* at 9a-10a (quoting *Rendall-Speranza v. Nassim*, 107 F.3d 913, 918 (D.C. Cir. 1997)).

The Fourth Circuit underscored that Locklear's attempted replacement of Hasselholms with Bergman and Luna was much more than a "mere slip of the pen" in which he merely miscast one known entity for another known entity; Locklear conceded that he did not even learn of Bergman and Luna until six months after the statute of limitations expired. Petition App. at 10a. The Fourth Circuit explained that Locklear's view "would expand Rule 15(c)(3) beyond its intended purpose, which is to prevent a defendant from defeating an action on the basis of a formality that is neither a surprise or prejudicial to a misnamed party." *Id.* at 11a. The Fourth Circuit added that Locklear's position would produce an unacceptable

paradox: a plaintiff with no knowledge of the proper defendant could file a timely complaint naming any entity (effectively a John Doe defendant even where the use of John Doe parties is forbidden) and trump the statute of limitations by later amendment. *Id.*

2. The assertion of an irreconcilable conflict among the Circuit Courts fails.

The Fourth Circuit decided this case consistent with the overwhelming weight of authority pertaining to the limited scope of a "mistake" for relation back purposes within the operation of Rule 15(c)(3). *See, e.g.*, *Barrow v. Wethersfield Police Dept.*, 66 F.3d 466 (2d Cir. 1995); *Jacobsen v. Osborne*, 133 F.3d 315 (5th Cir. 1998); *Cox v. Treadway*, 75 F.3d 230 (6th Cir. 1996); *Delgado-Burnet v. Clark*, 93 F.3d 339 (7th Cir. 1996); *Garrett v. Fleming*, 362 F.3d 692 (10th Cir. 2004); *Wayne v. Jarvis*, 197 F.3d 1098 (11th Cir. 1999). Locklear struggles to create the illusion of an emphatic split among the circuits where it does not exist. Upon careful examination, the few cases he offers as evidence of a split can either be comfortably harmonized with the Fourth Circuit's view on the law or be readily distinguished on their facts from the facts presented to the Fourth Circuit by Locklear's action against Bergman and Luna.

In *Roberts v. Michaels*, 219 F.3d 775 (8th Cir. 2000), the Eighth Circuit explained and applied Rule 15(c)(3), exactly as intended, to permit a name-changing amendment in recognition of "the traditional misnomer principle." *Id.* at 778, 779. Having been misled by the defendant's testimony at a prior administrative hearing, the plaintiff sued "Ron Michaels d/b/a Mid-South Vending"; the appellate

court specifically noted that the defendants themselves had created the potential for confusion by doing business under a fictitious name, Midsouth Vending, and had compounded the confusion by using the wrong corporate name in the earlier administrative proceedings. *Id.* at 779. The plaintiff then amended to correct the misnomer and sue "Midsouth Food Vending Service, Inc." *Id.* at 777. The Eighth Circuit invoked "the well-recognized distinction between a complaint that sues the wrong party, and a complaint that sues the right party by the wrong name." *Id.* at 777-78. Ironically, in light of Locklear's Petition challenging a decision of the Fourth Circuit, the Eighth Circuit in *Roberts* relied on a Fourth Circuit case as authority in separating permissible amendments that relate back to correct a misnomer from impermissible amendments that do not relate back to correct a misjoinder: "What was involved was, at most, a mere misnomer that injured no one. . . . The case is not one . . . of an amendment which would bring the defendant into the case for the first time and might prejudice its right to rely on the statute of limitations." *Id.* at 778 (quoting *United States v. A.H. Fischer Lumber Co.*, 162 F.2d 872, 873-74 (4th Cir. 1947)). Locklear's post-limitations amended complaint did not correct a misnomer pertaining to Bergman and Luna; by no stretch of the imagination was Hassleholms Mekanisk a mistaken name for Bergman & Beving or Luna. Instead, Locklear tried to bring in Bergman and Luna for the first time. The Eighth Circuit stands squarely with the Fourth Circuit in rejecting such an amendment under Rule 15(c)(3) after limitations have run.

The Second Circuit in *Soto v. Brooklyn Correctional Facility*, 80 F.3d 34 (2d Cir. 1996) addressed a case where

a pro se litigant filed a section 1983 civil rights action against an institutional defendant without naming individual defendants. The Second Circuit aptly observed this is the very type of case for which Rule 15(c) was created: where plaintiffs, unaware of the technical requirements of law, mistakenly named institutional instead of individual defendants; and Rule 15(c) was "expressly intended to preserve legitimate suits despite such mistakes *of law* at the pleading stage." *Id.* at 35-36 (emphasis added). The Second Circuit described pro se litigant Soto's failure to name individual defendants as a "mistake as to the technicalities of constitutional tort law." *Id.* at 37. The plaintiff in *Soto*, alleging that he had been attacked in the Brooklyn jail, failed to comply with the pleading requirement that he name individual wrongdoers. But for his mistake of law, he could have named the jail superintendent and the correctional officers in question. *See id.* The Second Circuit, mindful of the express intention of Rule 15(c) to preserve meritorious actions against government institutions and their personnel, gave Soto a second chance. *Soto* is inapposite to the present case where Locklear, represented by counsel in private litigation, did not timely locate the defendants he ultimately determined to sue (and where no constitutional claims were asserted).

The Third Circuit's case of *Singletary v. Pennsylvania Dept. of Corrections*, 266 F.3d 186 (3rd Cir. 2001), again involved a section 1983 civil rights action against a government facility and personnel. The plaintiff's son committed suicide in a Pennsylvania prison. *Id.* at 189. After limitations had run, the plaintiff moved to amend her complaint to substitute for "Unnamed Corrections Officers" a prison psychologist who had met with and evaluated the prisoner on a weekly basis. *Id.* at 191. The Third

Circuit, after long and careful analysis of the intricacies of constructive and shared notice, concluded that the psychologist did not receive notice of the claim until long after limitations had run. *Id.* at 200. The Third Circuit decided *Singletary* on the notice question. It did not decide any question pertaining to whether the plaintiff's lack of knowledge of the psychologist's identity constituted a mistake for Rule 15(c)(3) purposes. In dicta, the Third Circuit acknowledged that all of the other Courts of Appeal had concluded that a lack of knowledge of a defendant's identity is not a "mistake" concerning that identity. *Id.* at 201. In dicta, the Third Circuit requested that the Advisory Rules Committee consider the question further. *Id.* at 203.[3] The Advisory Rules Committee has done so. The Rules Committee docket (*see* Petition App. at 27a-28a) indicates that the Committee, and a specially-tasked subcommittee, devoted approximately six years of thought to analyze the extent of knowledge required in identifying a party under Rule 15(c)(3)(B) in the context of relation-back law. The Committee declined (Petition App. at 40a) to recommend expanding Rule 15(c)(3)(B) to embrace relating-back amendments due to "mistake or lack of information," the position advanced by Locklear. It completed its consideration without recommending any change, and the topic has been removed from the Rules Committee's agenda. *See* Petition App. at 27a, 28a.

Finally, the First Circuit case of *Leonard v. Parry*, 219 F.3d 25 (1st Cir. 2000), arose from a comedy of drafting

[3] In any event, the Third Circuit's dicta on this nuance of Rule 15(c)(3) was confined to the use of relation back to amend "John Doe" complaints in actions involving government officials. *See Singletary*, 266 F.3d at 201-02, n.5.

errors and pleading errors ultimately attributable to the defendant's insurance provider. Plaintiff Leonard and his minor child, Jade, were hurt in an automobile accident; the other vehicle was owned by Boulanger and driven by Parry. *Id.* at 27. The parties first settled the child's claim by negotiation; by local custom, a "friendly suit" was then filed to obtain court approval of the minor's settlement. *Id.* The settlement agreement and the friendly suit papers were drafted by a lawyer for the insurance carrier. *Id.* Both the settlement agreement and the friendly suit wrongly identified Boulanger, instead of Parry, as the driver of the other vehicle. *Id.* This mistake, emanating from the defense, then perpetuated itself. Plaintiff Leonard filed suit for his own injuries, again naming Boulanger as the driver and sole defendant. *Id.* After the plaintiff served the original complaint and summons, the mix-up was discovered and disclosed by defense counsel; Leonard then amended post-limitations to substitute Parry, the driver, for Boulanger, the owner. *Id.* On these distinctive facts and circumstances, the First Circuit permitted the amended complaint to relate back. The First Circuit remarked that "this blunder alone" caused Leonard to sue the wrong defendant in the first place. *Id.* at 28. The First Circuit remarked that the driver in the accident, Parry, obviously knew from the time of the accident that she had been driving the vehicle. *Id.*

Implicit in *Leonard* is another factor: both Boulanger as the owner and Parry as the driver were presumably covered under the Boulanger auto-insurance policy. There thus existed a shared identity, as co-insureds, between the former defendant and the substituted defendant. Most important, there was plainly no prejudice to the driver, Parry, on practical grounds. She was aware of the accident

from the moment it occurred, and the insurance carrier was on notice from the moment Leonard reported the accident for the purpose of opening negotiations to settle the child's claim. Presented these extraordinary events and equities, which are unlike those in any other Rule 15(c)(3)(B) case reported by any other Circuit Court, the First Circuit allowed Leonard's amended suit to proceed. *Leonard*'s facts, circumstances, and equities differ profoundly from Locklear's tardy claim against Bergman and Luna. Bergman and Luna were not responsible for Locklear's failure to determine his intended defendants, and they were left in the dark about the accident for more than four years, a conspicuous prejudice.

3. Undecided issues below may render an opinion of this Court as to the operation of Rule 15(c)(3)(B) merely advisory.

The procedural posture below also argues against review by this Court. In his appeal by right, Locklear raised a second question: whether Bergman and Luna received timely notice pursuant to Rule 4(m) under the multiple extensions of time to effectuate service upon the original defendant, Hassleholms Mekanisk, and the still-unnamed Bergman and Luna. This question requires an independent judicial construction of Rule 4(m) and its explicating advisory committee notes to determine the Rule's scope.[4] The Fourth Circuit did not reach this matter. Petition App. at 7a. Similarly, there remains pending in the district court Bergman and Luna's motion to dismiss for lack of personal jurisdiction. The jurisdictional motion

[4] Any construction of Rule 4(m) will also require consideration of Rule 4(f) pertaining to service in a foreign country.

to dismiss examining the provisions of the Maryland long-arm statute and related case law, asserted that Bergman and Luna are Swedish corporations that have no presence in Maryland, do not conduct business in Maryland directly or by an agent, have not otherwise purposely availed themselves of the protections or privileges under Maryland law, and have no transactional nexus to the factory machine's acquisition by its Maryland owner. The trial court did not reach the jurisdictional question. Petition App. at 16a. Accordingly, it is entirely possible that, in the event of a remand to either the Circuit Court or ultimately the district court, the case may be decided on other grounds. Such an eventuality would render an opinion of this Court about the operation of Rule 15(c)(3)(B) merely advisory, which this Court has long disapproved. *Alabama v. Shelton*, 535 U.S. 654, 676 (2002); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101-02 (1998).

4. Maryland's three-year statute of limitations conferred adequate time for determination of the proper defendant.

Locklear is decidedly wrong in arguing (Petition at 23-24) that he was put out of court on "a mere technicality" resulting from "gamesmanship." Maryland's general three-year statute of limitations is generous. It is a fundamental part of the State's law. The statute of limitations reflects the legislative judgment of what is deemed an adequate period of time in which a person of ordinary diligence should bring his action. *Walko Corp. v. Burger Chef*, 378 A.2d 1100, 1104 (Md. 1977). The primary consideration underlying the statute of limitations is one of fairness to defendants – that they ought not to be called on to resist a claim when evidence has been lost, memories have faded, and witnesses have disappeared. *Feldman v. Granger*, 257

A.2d 421, 426 (Md. 1969); *Doughty v. Prettyman*, 148 A.2d 438, 443 (Md. 1959). As the D.C. Circuit remarked,

> In the adversarial system of litigation the plaintiff is responsible for determining who is liable for [his] injury and for doing so before the statute of limitations runs out; if [he] later discovers another possible defendant, [he] may not, merely by invoking Rule 15(c), avoid the consequences of [his] earlier oversight.

Rendall-Speranza v. Nassim, 107 F.3d 913, 918 (D.C. Cir. 1997). Here Locklear slept on his rights until, and indeed past, the eleventh hour. His failure to comply with the statute of limitations is a far cry from the technical pleading mishap in *Foman v. Davis*, 371 U.S. 178 (1962), on which he relies, where the plaintiff's second notice of appeal failed to specify that the appeal was taken from the judgment sought to be vacated as well as the denial of her motions to vacate the judgment and to amend her complaint.

CONCLUSION

For the foregoing reasons, the Petition for a writ of certiorari should be denied.

Respectfully submitted,

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